

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 275 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

INDRAKUMAR AASANDAS SHARMA

Versus

DISTRICT MAGISTRATE

Appearance:

MS.DR KACHHWAH for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/04/2000

ORAL JUDGEMENT

#. District Magistrate, Panchmahals at Godhra, passed an order in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the PASA Act.

#. According to the detaining authority, the petitioner/detenué is a "bootlegger" and that his activities are detrimental to public order. The authority took into consideration nine offences registered against the detenué under the Bombay Prohibition Act. The authority also considered the statements of four witnesses in respect of which no FIR/complaint is lodged. The authority considered statements recorded by Police Inspector, LCB, Godhra and verified by Dy.S.P., Godhra as well as Sub Divisional Magistrate, Godhra and came to conclusion that the witnesses suffer from the fear of the detenué and therefore, their identity is required to be not disclosed in exercise of powers under section 9(2) of the PASA Act. The detaining authority also considered possibility of resorting to less drastic remedy and came to a conclusion that the detention under the PASA Act is the only efficacious remedy that can be resorted to.

#. The petitioner/detenué challenges the order of detention on various grounds. However, learned advocate Ms.D.R. Kachhwah, appearing for the petitioner submitted that there is improper exercise of power under section 9(2) of the PASA Act and that the privilege is wrongly claimed. She submitted that the right of the detenué of making an effective representation is infringed. The detention of the petitioner, therefore, would stand vitiated. The petition, may therefore, be allowed and the impugned order may be quashed and set aside.

3.1 In order to substantiate her arguments, Ms. Kachhwah submitted that the statements of anonymous witnesses have not been personally verified by the detaining authority. The detaining authority has relied upon the verification made by Dy.S.P. and Sub Divisional Magistrate. Ms. Kachhwah submitted that as such, in the absence of personal verification, it cannot be said that there is subjective satisfaction for the need for exercise of powers under section 9(2) of the PASA Act and therefore, the petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He placed reliance on the decision of this Court in the case of Bhikhabhai Thakorbbhai Patel v. Commissioner of Police, Surat City and others, reported in 1989 (2) GLH 420 and submitted that verification by the Dy.S.P. and Sub-Divisional Magistrate may be considered as sufficient for arriving at subjective satisfaction by the detaining authority. The detaining authority has in categorical terms stated that he is

personally satisfied about the genuineness of the fear expressed by the witnesses. This cannot be considered as a defect and the petition may, therefore, be quashed and set aside.

#. Having regard to rival side contentions, it requires to be noted that it is not a matter in dispute on factual aspect that the statements have not been verified by the detaining authority himself. The detaining authority in the grounds of detention has categorically stated as regards the verification made by the Dy.S.P., Godhra and Sub Divisional Magistrate, Godhra. The authority also observed that if the identity of the witnesses are disclosed, it may risk the person and property of the witnesses. The authority, therefore, deemed it proper to exercise powers under section 9(2) of the PASA Act.

#. It is very clear from the language employed in the grounds of detention and the tenor of the grounds of detention that the verification by the Dy.S.P. and Sub Divisional Magistrate was not at the instance of or under the directions of the District Magistrate. The District Magistrate has not himself undertaken any exercise to arrive at subjective satisfaction about the genuineness and correctness of the fear expressed by the anonymous witnesses qua the detainee. It is not the case that the verification by Sub Divisional Magistrate was at the behest of the detaining authority. It also may be noted that the detaining authority has not filed any affidavit and in light of these facts, the decision relied upon by Mr. Dave in the case of Bhikhabhai Thakorbbhai Patel v. Commissioner of Police, Surat City and others, reported in 1989 (2) GLH 420 will not be applicable for the purpose of the present case.

#. Thus, what emerges is that the detaining authority has not satisfied itself about the correctness and genuineness of the fear expressed by the witnesses qua the detainee in respect of their person and property and therefore, the exercise of powers under section 9(2) of the PASA Act can be said to have deprived the petitioner/detainee of making an effective representation.

#. The respondents have not come up with any case of the verification having been done by the Dy.S.P. or Sub Divisional Magistrate at the instance of the detaining authority. There appears not any communication between the detaining authority and the Sub Divisional Magistrate or the Dy.S.P. for verifying the statements after the proposal for detention is received by the detaining authority. Likewise, there is no report either from Sub

Divisional Magistrate or Dy.S.P. expressing opinion about the correctness and genuineness of the statements of the witnesses expressing fear qua the detenue and therefore also, the exercise of power under section 9(2) of the PASA Act cannot be said to be proper which would adversely affect the right of the detenue of making an effective representation as contemplated under Art. 22(5) of the Constitution of India. The petition therefore deserves to be allowed on this ground.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 20, 1999 is hereby quashed and set aside. The detenue - Indrakumar Aasandas Sharma, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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